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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/775,109	01/31/2001	Susan M. Janz	10003904-1	6315

7590 09/20/2004

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EXAMINER

KINDRED, ALFORD W

ART UNIT PAPER NUMBER

2172

DATE MAILED: 09/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/775,109	Applicant(s) JANZ ET AL.	
	Examiner Alford W. Kindred	Art Unit 2172	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-8 and 10-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-8, and 10-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Response to Reconsideration filed on 6/01/04.

--Claims 1, 3-8, and 10-20 are presented for examination.

This action is made final.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-8 and 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCurdy et al., US 2002/0035697 A1, in view of Wade et al., US 5,552,776.

As per claims 1, 4 and 6, McCurdy et al. teaches "reading, from an input record, a record unique device identification . . ." (see col. 3, lines [0109]-[0110]) "searching an index for an enduring unique device . . ." (see col. 3, lines [0111]-[0112]) "updating the index with the recorded device data" (see col. 8, lines [0115]-[0116]). McCurdy et al. does not explicitly teach "to uniquely identify a device and recorded device usage data." Wade et al. teaches "to uniquely identify a device and recorded device usage data" (see column 2, lines 30-52). It would have been obvious at the time of the invention for one of ordinary skill in the art to have combined the teachings of McCurdy and Wade above, because

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using the steps of “to uniquely identify a device and recorded device usage data”, would have given those skilled in the art the ability to distinctly identify devices used for recording usage data. This gives users the advantage of recording device usage data in an expedited manner.

As per claim 3, McCurdy et al. teaches “an enduring usage data from an enduring record . . . calculating a difference in usage data . . .” (see col. 8, lines [0116]-[0118]).

As per claim 5, this claim is rejected on grounds corresponding to the arguments given above for rejected claim 1 and is similarly rejected including the following:

-- McCurdy et al. teaches “updating enduring device data from an enduring record in the index . . . unique device identification” (see col. 10, lines [0142]-[0144]).

As per claim 7, McCurdy et al. teaches “tracking updates to the index” (see col. 20, lines [0302]-[0303]).

As per claims 8 and 10-14, these claims are rejected on grounds corresponding to the arguments given above for rejected claims 1, and 3-7 and are similarly rejected.

As per claims 15-20, these claims are rejected on grounds corresponding to the arguments given above for rejected claims 1, 3 and 7 and are similarly rejected.

Response to Arguments

4. Applicant's arguments with respect to claims 1, 3-8, and 10-20 have been considered but are not persuasive in view of the original (s) of rejection.

--As per applicant's arguments regarding "Applicants' date of Invention predates the effective date of McCurdy . . . Applicants submit the attached declaration, under 37 CFR 1.131 . . .", examiner disagrees and insist that the declaration does not completely illustrate applicant's current claim language.

--The declaration filed on 6/01/2004 under 37 CFR 1.131 has been considered but is ineffective to overcome the McCurdy reference. See MPEP 715.07 (d) (i.e. The affidavit or declaration and exhibits must clearly explain which facts or data applicant is relying on to show completion of his or her invention prior to the particular date. Vague and general statements in broad terms about what the exhibits describe along with a general assertion that the exhibits describe a reduction to practice "amounts essentially to mere pleading, unsupported by proof or a showing of facts" and, thus, does not satisfy the requirements of 37 CFR 1.131(b). In re Borkowski, 505 F.2d 713, 184 USPQ 29 (CCPA 1974). Applicant must give a clear explanation of the exhibits pointing out exactly what facts are established and relied on by applicant. 505 F.2d at 718-19, 184 USPQ at 33. See also In re Harry, 333 F.2d 920, 142 USPQ 164 (CCPA 1964) (Affidavit "asserts that facts exist but does not tell what they are or when they occurred."). The exhibits are not clear enough to indicate definite conception of the invention as illustrated in applicant's claim language. For example, applicant claim language of "a recorded unique device identification to

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uniquely identify . . .”, is not effective in the illustration of the claim language. The illustration by the applicant of “Flow 1A teaches serial Number invalid, default . . .”, is clear and definite conception of the currently claimed invention (i.e. claim language).

--As per applicant’s arguments regarding “Wade, does not disclose each of the elements of the present invention . . .”, examiner agrees that Wade, alone does not teach each of the elements in the applicant’s claims. However, Wade combined with McCurdy does teach applicant’s claim language as indicated in the previous office action.

Conclusion

5. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

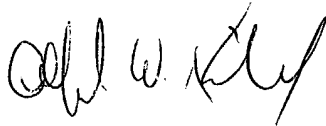
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alford W. Kindred whose telephone number is 703-305-3802. The examiner can normally be reached on Mon-Fri 9:00 am- 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Breene can be reached on (703) 305-9790. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Alford W. Kindred', is positioned above the printed name.

Alford W. Kindred
Patent Examiner
Tech Ctr. 2100